SINGLE BENCH

CANCELLED

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 4320 /2005

PETITIONERS

Plaintiffs

P.R. No. 4456 dt. Presented by Shri V.K. Pandey dated 1-9-05

1. Smt. Rupawati, wd/o Chandrshekar, aged about 80 years R/O Village Tetali, Tah. & Distt. – Raigarh (C.G.)

2. Premshanker, S/o Chandrshekar, aged about 60 years,R/O Village-Tetali,Tah.& Distt.- Raigarh (C.G.)

3. Chitravati, S/o Chandrashekar, W/o Devanand Gupta, aged about 50 years, R/o – Village Sahaspur, Distt.- Sundergarh (Orissa).

4. Satyabhama, W/o – Banmali, aged about 45 years, R/o Village Kathani, Tehsil and District – Raigarh, (C.G.)

5. Lalita, W/o Babulal, aged about 40 years, R/o Village Ghargoda, Tehsil and District – Raigarh, (C.G.)

VERSUS

RESPONDENTS

Defendants

1. Nandlal, S/o Bishi Kolta, aged about – 60 years, R/o Village Ketla, Tehsil and District – Raigarh, (C.G.)

2. Daya, S/o Nandlal Kolta, aged about – 35 years, R/o Village Ketla, Tehsil and District – Raigarh, (C.G.)

3. Smt. Shanti, Wd/o Arjun, aged about 65 years, R/o Village Murlipali, P.S. Kodekela, Tehsil – Lakhanpur, District – Jharsugra, (Orissa)

4. Smt. Tikedai, W/o Dharmdev, aged about 45 years, R/o Village Badeemal, Tehsil & District – Raigarh, (C.G.)

5. State of M.P. (Now C.G.) Through: Collector, Raigarh,(C.G.).

CERTIFIED COPY Clerk to A. G. BILASPUR

V.K. Pandey ADV

(4)

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WRIT PETITION UNDER ARTCLE 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(18)

मामला क्रमांक WP/4320/05 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14-9-2005

Mr. Vineet Kumar Pandey, counsel for the petitioners.
Mr. R.R.Sinha, Panel Lawyer for the respondent No.5/State.

By this writ petition under Article 227 of the Constitution of India, the petitioners have questioned the legality, propriety and correctness of the order dated 25-7-2005 (Annexure P-2), whereby the plaintiff's evidence has been closed.

Learned counsel for the petitioners submits that the suit was filed in the year 1997 for declaration and specific performance of the contract by the predecessor of the petitioners namely Chandrashekhar. However, he died during the pendency of the suit, therefore, his legal heirs were brought on record and in the meantime the evidence of the four witnesses was recorded. The defendants No.1 and 4 also died, therefore, proceeding for bringing their legal heirs on record was also taken up and in that process, the time was consumed and thereafter the petitioners wanted to adduce the evidence of their witness Batau and for that purpose the matter was fixed for 25-7-2005. However, on that day, the counsel for the petitioners could not prepare and file the affidavit, therefore, the counsel sought for an adjournment which was refused. The counsel for the petitioners submits that the order impugned is *prima facie* arbitrary and perverse. At least, the trial Court ought to have granted one more opportunity to the

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

आदेश पत्रक

मामला क्रमांक WP. 4820/05 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioners for adducing the evidence of their witness Batau on affidavit. The counsel for the petitioners could not prepare the affidavit, therefore, there was no fault on the part of the petitioners.

In view of the above facts and circumstances and on perusal of the impugned order dated 25-7-2005, it reveals that the order impugned is perverse. It has nowhere been mentioned that in spite of giving sufficient opportunity to the petitioners, they were not able to adduce the evidence. At the most, the trial Court ought to have granted one more opportunity to the petitioners to adduce the evidence of their witness Batau on affidavit. For that purpose, the trial Court was entitled to impose cost on the petitioners. In the circumstances, I am of the opinion that, it is not necessary to issue notice to the respondents No.1 to 4 for this small matter because the issuance of notice to them is going to further delay the proceedings of the suit which is pending since 1997, as such the notice is not being issued to them. However, the respondents No.1 to 4 will be entitled to move application for modification of this order if they feel aggrieved by this order.

For the reasons mentioned above, the petition is allowed and the trial Court is directed to give one opportunity to the petitioners to adduce the evidence of their witness Batau on affidavit. That opportunity shall be given to the petitioners subject to payment of cost of Rs.100/-(Rupees One Hundred) by the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioners to the respondents No.1 to 4 and if after that opportunity the petitioners are not able to adduce the evidence then the trial Court will be entitled to proceed further in accordance with law.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

G.Singh

(पीछे देखिये)